

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION

Case No. 07-MD-1902 (GEL)

This Document Relates To:

DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/25/08

KENNETH KRYSS and CHRISTOPHER STRIDE, as  
Joint Official Liquidators of SPHINX LTD., *et al.*,

Case No. 08-cv-3065 (GEL)

Plaintiffs,

Case No. 08-cv-3086 (GEL)

-against-

**STIPULATION AND ORDER**

CHRISTOPHER SUGRUE, *et al.*,

Defendants.

WHEREAS, plaintiffs Kenneth M. Kryss and Christopher Stride, as Joint Official Liquidators of SPhinX, Ltd., SPhinX Macro Fund SPC, SPhinX Macro, Ltd., SPhinX Managed Futures Fund SPC, SPhinX Long/Short Equity Fund SPC, SPhinX Convertible Arbitrage Fund SPC, SPhinX Fixed Income Arbitrage Fund SPC, SPhinX Distressed Fund SPC, SPhinX Merger Arbitrage Fund SPC, SPhinX Special Situations Fund SPC, SPhinX Equity Market Neutral Fund SPC, SPhinX Strategy Fund, Ltd., SPhinX Plus SPC, Ltd., SPhinX Managed Futures, Ltd., SPhinX Long/Short Equity, Ltd., SPhinX Convertible Arbitrage, Ltd., SPhinX Fixed Income Arbitrage, Ltd., SPhinX Distressed, Ltd., SPhinX Merger Arbitrage, Ltd., SPhinX Special Situations, Ltd., SPhinX Equity Market Neutral, Ltd., and PlusFunds Managed Access Fund SPC, Ltd., Kenneth M. Kryss and Christopher Stride, as assignees of claims assigned by Miami Children's Hospital Foundation, OFI, Green & Smith Investment Management LLC, Thales Fund Management LLC, Kellner

Dileo & Co., LLC, Martingale Asset Management LP, Longacre Fund Management LLC, Arnhold & S. Bleichroeder Advisers LLC, PicTet & Cie, RGA America Reinsurance Company, Deutsche Bank (Suisse) SA, Arab Monetary Fund, Hansard International Ltd., Concordia Advisors LLC, Gabelli Securities, Inc., Citgo Global Custody, and James P. Sinclair, as Trustee of the SPhinX Trust (collectively, "Plaintiffs"), commenced this action in the Supreme Court of the State of New York, New York County, on March 5, 2008 (the "Action"); and

**WHEREAS**, the Action was removed to the United States District Court for the Southern District of New York on March 26, 2008 under two separate proceedings, Case Nos. 08 Civ. 3065 and 08 Civ. 3086, both of which were assigned to United States District Judge Gerard E. Lynch as related cases pursuant to April 8, 2008 Notices of Assignment; and

**WHEREAS**, on April 2, 2008, Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft ("BAWAG") filed a motion to refer those claims asserted against it in the Action to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (the "Motion to Refer"), and such motion remains pending; and

**WHEREAS**, a deposition protocol order (the "Deposition Protocol") and a confidentiality order (the "Confidentiality Order") have been approved by the Court and are in effect in the Refco MDL, *In Re: Refco Securities Litigation*, 07-MD-1902 (GEL) (the "MDL");

**WHEREAS**, BAWAG seeks to participate in the coordinated discovery being conducted in the Refco MDL and pursuant to the Deposition Protocol and the Confidentiality Order for purposes of the Action; and

**WHEREAS**, certain parties contend that BAWAG is already subject to the terms of the Deposition Protocol but see no reason not to agree to this stipulation so confirming;

**IT IS HEREBY STIPULATED AND AGREED**, by and between BAWAG and the undersigned parties, who or which are parties to the Action or other actions that are part of the MDL, through their attorneys, as follows:

1. BAWAG retains all rights to seek referral to the Bankruptcy Court through its Motion to Refer, and plaintiffs retain all rights to seek remand and/or abstention in the Action and to oppose BAWAG's Motion to Refer, and this Stipulation and Order is without prejudice to such rights.

2. Without prejudice to this reservation of rights and subject to any subsequent order of the Court, BAWAG hereby agrees to be a party to the Deposition Protocol for purposes of the Action and is permitted all rights provided thereunder, it being expressly understood that, by entering into this Stipulation, BAWAG does not waive, and expressly reserves, the right to seek relief from the terms of the Deposition Protocol, including, without limitation, an application for relief in the event that BAWAG believes that the deposition process under the Deposition Protocol has not provided full and adequate deposition discovery to BAWAG relating to the matters raised in Plaintiffs' complaint herein, or in any amended version thereof, and/or any defenses thereto.

3. Without prejudice to this reservation of rights, and subject to any subsequent order of the Court, BAWAG hereby agrees to be a party to the Confidentiality Order and is permitted all rights provided thereunder.

4. The Action is deemed a "Related Action" for purposes of the Confidentiality Order.

5. As a party to the Confidentiality Order, BAWAG shall be entitled to receive from each producing party all materials produced, or previously produced, by such party in any action subject to the Deposition Protocol.

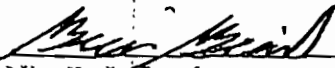
6. BAWAG reserves the right to seek modification of the restrictions on disclosure included in the Confidentiality Order at paragraph 10, as provided for in paragraph 32 of the Confidentiality Order, to the extent that such materials obtained by BAWAG are necessary or useful in related matters or litigations.

7. Nothing contained herein shall waive or act to limit any of BAWAG's or any other party's rights under the Deposition Protocol and Confidentiality Order, all of which are expressly reserved, including any other party's rights to oppose any relief sought by BAWAG pursuant to paragraphs 1, 2, and 6 of this Stipulation and Order.

~~DONE AND ORDERED~~  
~~this \_\_\_\_ day of June, 2008~~

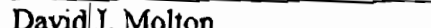
~~Honorable, Gerard E. Lynch~~  
~~United States District Judge~~

Consented and Agreed to by:

  
Nicolle L. Jacoby  
Brian H. Brick  
DECHERT LLP  
1095 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 698-3500  
Fax: (212) 698-3599  
[nicolle.jacoby@dechert.com](mailto:nicolle.jacoby@dechert.com)  
[brian.brick@dechert.com](mailto:brian.brick@dechert.com)  
Attorneys for Defendant BAWAG

8. Upon a request for the production of documents, BAWAG shall be permitted: (a) to identify materials that relate to claims that have not waived Austrian bank secrecy laws, and (b) to withhold such materials pending either a waiver of such laws by the affected Client or pursuant to a determination by the Court with regard to the production of such materials.

*EEJ*  
6/28/08

  
David J. Molton  
Andrew Dash  
BROWN RUDNICK BERLACK  
ISRAELS LLP  
Seven Times Square  
New York, NY 10036  
Telephone: (212) 209-4800  
Fax: (212) 209-4801  
[dmolton@brownrudnick.com](mailto:dmolton@brownrudnick.com)  
[adash@brownrudnick.com](mailto:adash@brownrudnick.com)  
Co-Counsel for Plaintiffs



*with permission,  
by Megan D. McIntyre*  
*[Signature]*

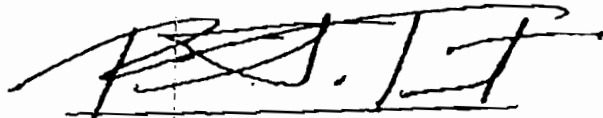
Max W. Berger  
John P. Coffey  
Salvatore J. Graziano  
John C. Browne  
Jeremy P. Robinson  
BERNSTEIN LITOWITZ BERGER &  
GROSSMAN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 554-1400  
Fax: (212) 554-1400  
[mwb@blbglaw.com](mailto:mwb@blbglaw.com)  
[jpc@blbglaw.com](mailto:jpc@blbglaw.com)  
[sg@blbglaw.com](mailto:sg@blbglaw.com)  
[jcb@blbglaw.com](mailto:jcb@blbglaw.com)  
[jpr@blbglaw.com](mailto:jpr@blbglaw.com)  
Attorneys for RH Capital LLC  
And Co-Lead Counsel for the Prospective Class

Sascha Rand  
Rebecca Trent  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Fax: (212) 849-7100  
[sascharand@quinnemanuel.com](mailto:sascharand@quinnemanuel.com)  
[beckytrent@quinnemanuel.com](mailto:beckytrent@quinnemanuel.com)  
Attorneys for Marc Kirschner as  
Trustee of the Refco Litigation Trust  
and Refco Private Actions Trust

*Megan D. McIntyre*  
*[Signature]*

Stuart M. Grant  
James J. Sabella  
Megan D. McIntyre (*pro hac vice*)  
Jeff A. Almeida  
Christine M. Mackintosh  
GRANT & EISENHOFER P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
Telephone: (302) 622-7000  
Fax: (302) 622-7100  
[sgrant@gclaw.com](mailto:sgrant@gclaw.com)  
[jsabella@gclaw.com](mailto:jsabella@gclaw.com)  
[mmcintyre@gclaw.com](mailto:mmcintyre@gclaw.com)  
[jalmeida@gclaw.com](mailto:jalmeida@gclaw.com)  
[cmackintosh@gclaw.com](mailto:cmackintosh@gclaw.com)  
Attorneys for Pacific  
Investment Management Company, LLC  
And Co-Lead Counsel for the  
Prospective Class

Robert B. McCaw  
Philip D. Anker  
Lori A. Martin  
John V.H. Pierce  
James Millar  
Jeremy S. Winer  
Ross E. Firszenbaum  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
399 Park Avenue  
New York, NY 10022  
Telephone: (212) 230-8800  
Fax: (212) 230-8888  
[robert.mccaw@wilmerhale.com](mailto:robert.mccaw@wilmerhale.com)  
[philip.anker@wilmerhale.com](mailto:philip.anker@wilmerhale.com)  
[lori.martin@wilmerhale.com](mailto:lori.martin@wilmerhale.com)  
[john.pierce@wilmerhale.com](mailto:john.pierce@wilmerhale.com)  
[james.millar@wilmerhale.com](mailto:james.millar@wilmerhale.com)  
[jeremy.winer@wilmerhale.com](mailto:jeremy.winer@wilmerhale.com)  
[ross.firszenbaum@wilmerhale.com](mailto:ross.firszenbaum@wilmerhale.com)  
Attorneys for Defendants JP Morgan  
Chase & Co., Credit Suisse Securities  
(USA) LLC (formerly Credit Suisse First  
Boston LLC) and Banc of America  
Securities LLC



Max W. Berger  
John P. Coffey  
Salvatore J. Graziano  
John C. Browne  
Jeremy P. Robinson  
BERNSTEIN LITOWITZ BERGER &  
GROSSMAN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 554-1400  
Fax: (212) 554-1400  
[mwb@blbglaw.com](mailto:mwb@blbglaw.com)  
[jpc@blbglaw.com](mailto:jpc@blbglaw.com)  
[sig@blbglaw.com](mailto:sig@blbglaw.com)  
[jcb@blbglaw.com](mailto:jcb@blbglaw.com)  
[jpr@blbglaw.com](mailto:jpr@blbglaw.com)  
*Attorneys for RH Capital LLC  
And Co-Lead Counsel for the Prospective Class*

Sascha Rand  
Rebecca Trent  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Fax: (212) 849-7100  
[sascharand@quinnemanuel.com](mailto:sascharand@quinnemanuel.com)  
[beckytrent@quinnemanuel.com](mailto:beckytrent@quinnemanuel.com)  
*Attorneys for Marc Kirschner as  
Trustee of the Refco Litigation Trust  
and Refco Private Actions Trust*

Stuart M. Grant  
James J. Sabella  
Megan D. McIntyre (*pro hac vice*)  
Jeff A. Almeida  
Christine M. Mackintosh  
GRANT & EISENHOFER P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
Telephone: (302) 622-7000  
Fax: (302) 622-7100  
[sgrant@gelaw.com](mailto:sgrant@gelaw.com)  
[jsabella@gelaw.com](mailto:jsabella@gelaw.com)  
[mmcintyre@gelaw.com](mailto:mmcintyre@gelaw.com)  
[jahmeida@gelaw.com](mailto:jahmeida@gelaw.com)  
[cmackintosh@gelaw.com](mailto:cmackintosh@gelaw.com)  
*Attorneys for Pacific  
Investment Management Company, LLC  
And Co-Lead Counsel for the  
Prospective Class*

Robert B. McCaw  
Philip D. Anker  
Lori A. Martin  
John V.H. Pierce  
James Millar  
Jeremy S. Winer  
Ross E. Firszenbaum  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
399 Park Avenue  
New York, NY 10022  
Telephone: (212) 230-8800  
Fax: (212) 230-8888  
[robert.mccaw@wilmerhale.com](mailto:robert.mccaw@wilmerhale.com)  
[philip.anker@wilmerhale.com](mailto:philip.anker@wilmerhale.com)  
[lori.martin@wilmerhale.com](mailto:lori.martin@wilmerhale.com)  
[john.pierce@wilmerhale.com](mailto:john.pierce@wilmerhale.com)  
[james.millar@wilmerhale.com](mailto:james.millar@wilmerhale.com)  
[jeremy.winer@wilmerhale.com](mailto:jeremy.winer@wilmerhale.com)  
[ross.firszenbaum@wilmerhale.com](mailto:ross.firszenbaum@wilmerhale.com)  
*Attorneys for Defendants JP Morgan  
Chase & Co., Credit Suisse Securities  
(USA) LLC (formerly Credit Suisse First  
Boston LLC) and Banc of America  
Securities LLC*

---

Max W. Berger  
John P. Coffey  
Salvatore J. Graziano  
John C. Browne  
Jeremy P. Robinson  
BERNSTEIN LITOWITZ BERGER &  
GROSSMAN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 554-1400  
Fax: (212) 554-1400  
[mwb@blbglaw.com](mailto:mwb@blbglaw.com)  
[jpc@blbglaw.com](mailto:jpc@blbglaw.com)  
[sig@blbglaw.com](mailto:sig@blbglaw.com)  
[jcb@blbglaw.com](mailto:jcb@blbglaw.com)  
[jpr@blbglaw.com](mailto:jpr@blbglaw.com)  
*Attorneys for RH Capital LLC  
And Co-Lead Counsel for the Prospective Class*

---

Sascha Rand  
Rebecca Trent  
QUINN EMANUEL URQUHART  
OLIVER & HEDGES LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Fax: (212) 849-7100  
[sascharand@quinnemanuel.com](mailto:sascharand@quinnemanuel.com)  
[beckytrent@quinnemannel.com](mailto:beckytrent@quinnemannel.com)  
*Attorneys for Marc Kirschner as  
Trustee of the Refco Litigation Trust  
and Refco Private Actions Trust*

---

Stuart M. Grant  
James J. Sabella  
Megan D. McIntyre (*pro hac vice*)  
Jeff A. Almeida  
Christine M. Mackintosh  
GRANT & EISENHOFER P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
Telephone: (302) 622-7000  
Fax: (302) 622-7100  
[sgrant@gelaw.com](mailto:sgrant@gelaw.com)  
[jsabella@gelaw.com](mailto:jsabella@gelaw.com)  
[mmcintyre@gelaw.com](mailto:mmcintyre@gelaw.com)  
[jalmeida@gelaw.com](mailto:jalmeida@gelaw.com)  
[cmackintosh@gelaw.com](mailto:cmackintosh@gelaw.com)  
*Attorneys for Pacific  
Investment Management Company, LLC  
And Co-Lead Counsel for the  
Prospective Class*

---

Robert B. McCaw  
Philip D. Anker  
Lori A. Martin  
John V.H. Pierce  
James Millar  
Jeremy S. Winer  
Ross E. Firszenbaum  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
399 Park Avenue  
New York, NY 10022  
Telephone: (212) 230-8800  
Fax: (212) 230-8888  
[robert.mccaw@wilmerhale.com](mailto:robert.mccaw@wilmerhale.com)  
[philip.anker@wilmerhale.com](mailto:philip.anker@wilmerhale.com)  
[lori.martin@wilmerhale.com](mailto:lori.martin@wilmerhale.com)  
[john.pierce@wilmerhale.com](mailto:john.pierce@wilmerhale.com)  
[james.millar@wilmerhale.com](mailto:james.millar@wilmerhale.com)  
[jeremy.winer@wilmerhale.com](mailto:jeremy.winer@wilmerhale.com)  
[ross.firszenbaum@wilmerhale.com](mailto:ross.firszenbaum@wilmerhale.com)  
*Attorneys for Defendants JP Morgan  
Chase & Co., Credit Suisse Securities  
(USA) LLC (formerly Credit Suisse First  
Boston LLC) and Banc of America  
Securities LLC*



David Mollon  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 294-6700  
Fax: (212) 294-4700  
[dmollon@winston.com](mailto:dmollon@winston.com)

Bruce R. Braun  
Bradley E. Lerman  
Linda T. Coberly  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Fax: (312) 558-5700  
[bbraun@winston.com](mailto:bbraun@winston.com)  
[blerman@winston.com](mailto:blerman@winston.com)  
[lcoberly@winston.com](mailto:lcoberly@winston.com)  
*Attorneys for Defendant*  
*Grant Thornton LLP*

Richard Cashman  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Telephone: (212) 832-8300  
Fax: (212) 763-7600  
[richard.cashman@hellererhrman.com](mailto:richard.cashman@hellererhrman.com)  
*Attorneys for Defendant Philip Silverman*

Stuart L. Shapiro  
Matthew J. Sava  
Yoram J. Miller  
SHAPIRO FORMAN ALLEN & SAVA LLP  
380 Madison Avenue  
New York, NY 10017  
Telephone: (212) 972-4900  
Fax: (212) 557-1275  
[shapiro@sfa-law.com](mailto:shapiro@sfa-law.com)  
[sava@sfa-law.com](mailto:sava@sfa-law.com)  
[miller@sfa-law.com](mailto:miller@sfa-law.com)  
*Attorneys for Defendants Joseph J.*  
*Murphy and Gerald M. Sherer*

Ivan Kline  
Stuart I. Friedman  
FRIEDMAN & WITTENSTEIN,  
a Professional Corporation  
600 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 750-8700  
Fax: (212) 223-8391  
[ikline@friedmanwittenstein.com](mailto:ikline@friedmanwittenstein.com)  
[sfriedman@friedmanwittenstein.com](mailto:sfriedman@friedmanwittenstein.com)  
*Attorneys for Defendant William M.*  
*Sexton*



---

David Mollón  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 294-6700  
Fax: (212) 294-4700  
[dmollon@winston.com](mailto:dmollon@winston.com)

Bruce R. Braun  
Bradley E. Lerman  
Linda T. Coberly  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Fax: (312) 558-5700  
[bbraun@winston.com](mailto:bbraun@winston.com)  
[blerman@winston.com](mailto:blerman@winston.com)  
[lcoberly@winston.com](mailto:lcoberly@winston.com)  
*Attorneys for Defendant*  
*Grant Thornton LLP*

---

*Richard Cashman*  
Richard Cashman  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Telephone: (212) 832-8300  
Fax: (212) 763-7600  
[richard.cashman@hellerehrman.com](mailto:richard.cashman@hellerehrman.com)  
*Attorneys for Defendant Philip Silverman*

---

Stuart L. Shapiro  
Matthew J. Sava  
Yoram J. Miller  
SHAPIRO FORMAN ALLEN & SAVA LLP  
380 Madison Avenue  
New York, NY 10017  
Telephone: (212) 972-4900  
Fax: (212) 557-1275  
[shapiro@sfa-law.com](mailto:shapiro@sfa-law.com)  
[sava@sfa-law.com](mailto:sava@sfa-law.com)  
[miller@sfa-law.com](mailto:miller@sfa-law.com)  
*Attorneys for Defendants Joseph J.*  
*Murphy and Gerald M. Sherer*

---

Ivan Kline  
Stuart I. Friedman  
Elizabeth D. Meacham  
FRIEDMAN & WITTENSTEIN  
600 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 750-8700  
Fax: (212) 223-8391  
[ikline@friedmanwittenstein.com](mailto:ikline@friedmanwittenstein.com)  
[sfriedman@friedmanwittenstein.com](mailto:sfriedman@friedmanwittenstein.com)  
[emeacham@friedmanwittenstein.com](mailto:emeacham@friedmanwittenstein.com)  
*Attorneys for Defendant William M.*  
*Sexton*

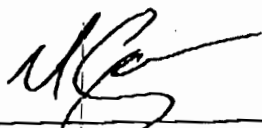
---

David Mollón  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 294-6700  
Fax: (212) 294-4700  
[dmollon@winston.com](mailto:dmollon@winston.com)

Bruce R. Braun  
Bradley E. Lerman  
Linda T. Coberly  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Fax: (312) 558-5700  
[bbraun@winston.com](mailto:bbraun@winston.com)  
[bleyman@winston.com](mailto:bleyman@winston.com)  
[lcoberly@winston.com](mailto:lcoberly@winston.com)  
*Attorneys for Defendant*  
*Grant Thornton LLP*

---

Richard Cashman  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Telephone: (212) 832-8300  
Fax: (212) 763-7600  
[richard.cashman@hellerehrman.com](mailto:richard.cashman@hellerehrman.com)  
*Attorneys for Defendant Philip Silverman*



---

Stuart L. Shapiro  
Matthew J. Sava  
Yoram J. Miller  
SHAPIRO FORMAN ALLEN & SAVA LLP  
380 Madison Avenue  
New York, NY 10017  
Telephone: (212) 972-4900  
Fax: (212) 557-1275  
[shapiro@sfa-law.com](mailto:shapiro@sfa-law.com)  
[sava@sfa-law.com](mailto:sava@sfa-law.com)  
[miller@sfa-law.com](mailto:miller@sfa-law.com)  
*Attorneys for Defendants Joseph J.*  
*Murphy and Gerald M. Sherer*

---

Ivan Kline  
Stuart I. Friedman  
Elizabeth D. Meacham  
FRIEDMAN & WITTENSTEIN  
600 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 750-8700  
Fax: (212) 223-8391  
[ikline@friedmanwittenstein.com](mailto:ikline@friedmanwittenstein.com)  
[sfriedman@friedmanwittenstein.com](mailto:sfriedman@friedmanwittenstein.com)  
[emeacham@friedmanwittenstein.com](mailto:emeacham@friedmanwittenstein.com)  
*Attorneys for Defendant William M.*  
*Sexton*

---

David Mollón  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 294-6700  
Fax: (212) 294-4700  
[dmollon@winston.com](mailto:dmollon@winston.com)

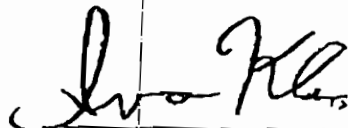
Bruce R. Braun  
Bradley E. Lerman  
Linda T. Coberly  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Fax: (312) 558-5700  
[bbraun@winston.com](mailto:bbraun@winston.com)  
[bleman@winston.com](mailto:bleman@winston.com)  
[lcoberly@winston.com](mailto:lcoberly@winston.com)  
*Attorneys for Defendant*  
*Grant Thornton LLP*

---

Richard Cashman  
HELLER EHRMAN LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Telephone: (212) 832-8300  
Fax: (212) 763-7600  
[richard.cashman@hellerehrman.com](mailto:richard.cashman@hellerehrman.com)  
*Attorneys for Defendant Philip Silverman*

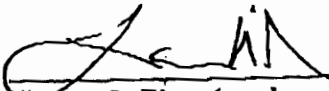
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Stuart L. Shapiro  
Matthew J. Sava  
Yoram J. Miller  
SHAPIRO FORMAN ALLEN & SAVA LLP  
380 Madison Avenue  
New York, NY 10017  
Telephone: (212) 972-4900  
Fax: (212) 557-1275  
[shapiro@sfa-law.com](mailto:shapiro@sfa-law.com)  
[sava@sfa-law.com](mailto:sava@sfa-law.com)  
[miller@sfa-law.com](mailto:miller@sfa-law.com)  
*Attorneys for Defendants Joseph J.*  
*Murphy and Gerald M. Sherer*



---

Ivan Kline  
Stuart I. Friedman  
FRIEDMAN & WITTENSTEIN,  
a Professional Corporation  
600 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 750-8700  
Fax: (212) 223-8391  
[ikline@friedmanwittenstein.com](mailto:ikline@friedmanwittenstein.com)  
[sfriedman@friedmanwittenstein.com](mailto:sfriedman@friedmanwittenstein.com)  
*Attorneys for Defendant William M.*  
*Sexton*

  
Norman L. Eisen (*pro hac vice*)  
Laura E. Neish  
ZUCKERMAN SPAEDER LLP  
1540 Broadway, Suite 1604  
New York, New York 10036  
Telephone: (212) 704-9600  
Fax: (212) 704-4256  
[neisen@zuckerman.com](mailto:neisen@zuckerman.com)  
[lneish@zuckerman.com](mailto:lneish@zuckerman.com)  
*Attorneys for Defendant Toner Grant*

James J. Capra, Jr.  
ORRICK, HERRINGTON  
& SUTCLIFFE LLP  
666 Fifth Avenue  
New York, NY 10103-0001  
Telephone: (212) 506-5000  
Fax: (212) 506-5151  
[jcapra@orrick.com](mailto:jcapra@orrick.com)  
*Attorneys for Defendants  
PricewaterhouseCoopers LLP and  
Mari Ferris*

Greg A. Danilow  
Seth Goodchild  
WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
[greg.danilow@weil.com](mailto:greg.danilow@weil.com)  
[seth.goodchild@wcjl.com](mailto:seth.goodchild@wcjl.com)  
*Attorneys for the "THL" and "Audit  
Committee" Defendants*


Richard A. Rosen  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Fax: (212) 757-3990  
[rosen@paulweiss.com](mailto:rosen@paulweiss.com)  
*Attorneys for the "THL" Defendants*



---

Norman L. Eisen (*pro hac vice*)  
Laura E. Neish  
ZUCKERMAN SPAEDER LLP  
1540 Broadway, Suite 1604  
New York, New York 10036  
Telephone: (212) 704-9600  
Fax: (212) 704-4256  
[neisen@zuckerman.com](mailto:neisen@zuckerman.com)  
[lnesh@zuckerman.com](mailto:lnesh@zuckerman.com)  
*Attorneys for Defendant Tone Grant*

---

  
James J. Capra, Jr.  
ORRICK, HERRINGTON  
& SUTCLIFFE LLP  
666 Fifth Avenue  
New York, NY 10103-0001  
Telephone: (212) 506-5000  
Fax: (212) 506-5151  
[jcapra@orrick.com](mailto:jcapra@orrick.com)  
*Attorneys for Defendants  
PricewaterhouseCoopers LLP and  
Mari Ferris*

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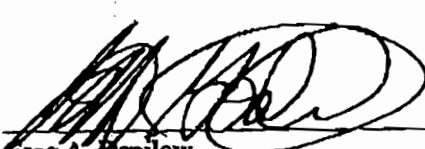
Greg A. Danilow  
Seth Goodchild  
WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
[greg.danilow@weil.com](mailto:greg.danilow@weil.com)  
[seth.goodchild@weil.com](mailto:seth.goodchild@weil.com)  
*Attorneys for the "THL" and "Audit  
Committee" Defendants*

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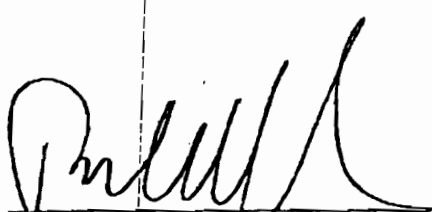
Richard A. Rosen  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Fax: (212) 757-3990  
[rosen@paulweiss.com](mailto:rosen@paulweiss.com)  
*Attorneys for the "THL" Defendants*

Norman L. Eisen (*pro hac vice*)  
Laura E. Neish  
ZUCKERMAN SPAEDER LLP  
1540 Broadway, Suite 1604  
New York, New York 10036  
Telephone: (212) 704-9600  
Fax: (212) 704-4256  
[neisen@zuckerman.com](mailto:neisen@zuckerman.com)  
[lneish@zuckerman.com](mailto:lneish@zuckerman.com)  
*Attorneys for Defendant Tone Grant*

James J. Capra, Jr.  
ORRICK, HERRINGTON  
& SUTCLIFFE LLP  
666 Fifth Avenue  
New York, NY 10103-0001  
Telephone: (212) 506-5000  
Fax: (212) 506-5151  
[jcapra@orrick.com](mailto:jcapra@orrick.com)  
*Attorneys for Defendants  
PricewaterhouseCoopers LLP and  
Mari Ferris*



Greg A. Danilow  
Seth Goodchild (56-2296)  
WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
[greg.danilow@weil.com](mailto:greg.danilow@weil.com)  
[seth.goodchild@weil.com](mailto:seth.goodchild@weil.com)  
*Attorneys for the "THL" and "Audit  
Committee" Defendants*



Richard A. Rosen (LR 5132)  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Fax: (212) 757-3990  
[rosen@paulweiss.com](mailto:rosen@paulweiss.com)  
*Attorneys for the "THL" Defendants*

  
Michael T. Hannafan (*pro hoc vice*)  
Blake T. Hannafan (*pro hoc vice*)  
HANNAFAN & HANNAFAN, LTD.  
One East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Telephone: (312) 527-0055  
Fax: (312) 527-0220  
[mth@hannafanlaw.com](mailto:mth@hannafanlaw.com)  
[bth@hannafanlaw.com](mailto:bth@hannafanlaw.com)  
*Attorneys for Defendant Tone Grant*

Helen B. Kim  
KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-3012  
Telephone: (310) 788-4400  
Fax: (310) 788-4471  
[helen.kim@kattenlaw.com](mailto:helen.kim@kattenlaw.com)  
*Attorneys for Defendant Dennis Klejna*

Jeffrey T. Golenbock  
Adam C. Silverstein  
GOLENBOCK EISEMAN ASSOR  
BELL & PESKOE LLP  
437 Madison Avenue, 35<sup>th</sup> Floor  
New York, NY 10022-7302  
Telephone: (212) 907-7300  
Fax: (212) 754-0330  
[jgolenbock@golenbock.com](mailto:jgolenbock@golenbock.com)  
[asilverstein@golenbock.com](mailto:asilverstein@golenbock.com)  
*Attorneys for Defendants Philip R. Bennett,  
Refco Group Holdings Inc., and Philip R.  
Bennett Three Year Annuity Trust*

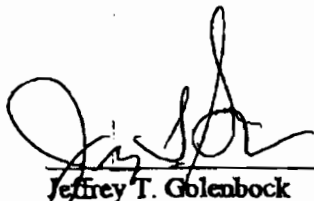
Richard E. Nathan  
NATHAN LAW OFFICE  
123 South Jume Street  
Los Angeles, CA 90004  
Telephone: (323) 931-8080  
Fax: (323) 931-8008  
[renathan@att.net](mailto:renathan@att.net)  
*Attorneys for Defendant Dennis Klejna*

---

Michael T. Hannafan (*pro hac vice*)  
Blake T. Hannafan (*pro hac vice*)  
HANNAFAN & HANNAFAN, LTD.  
One East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Telephone: (312) 527-0055  
Fax: (312) 527-0220  
[mth@hannafanlaw.com](mailto:mth@hannafanlaw.com)  
[bth@hannafanlaw.com](mailto:bth@hannafanlaw.com)  
*Attorneys for Defendant Tone Grant*

---

Helen B. Kim  
KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-3012  
Telephone: (310) 788-4400  
Fax: (310) 788-4471  
[helen.kim@kattenlaw.com](mailto:helen.kim@kattenlaw.com)  
*Attorneys for Defendant Dennis Klejna*



---

Jeffrey T. Golenbock  
Adam C. Silverstein  
GOLENBOCK EISEMAN ASSOR  
BELL & PESKOE LLP  
437 Madison Avenue, 35<sup>th</sup> Floor  
New York, NY 10022-7302  
Telephone: (212) 907-7300  
Fax: (212) 754-0330  
[jgolenbock@golenbock.com](mailto:jgolenbock@golenbock.com)  
[asilverstein@golenbock.com](mailto:asilverstein@golenbock.com)  
*Attorneys for Defendants Philip R. Bennett,  
Refco Group Holdings Inc., and Phillip R.  
Bennett Three Year Annuity Trust*

---

Richard E. Nathan  
NATHAN LAW OFFICE  
123 South June Street  
Los Angeles, CA 90004  
Telephone: (323) 931-8080  
Fax: (323) 931-8008  
[renathan@att.net](mailto:renathan@att.net)  
*Attorneys for Defendant Dennis Klejna*



---

Michael T. Hannafan (*pro hac vice*)  
Blake T. Hannafan (*pro hac vice*)  
HANNAFAN & HANNAFAN, LTD.  
One East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Telephone: (312) 527-0055  
Fax: (312) 527-0220  
[mth@hannafanlaw.com](mailto:mth@hannafanlaw.com)  
[bth@hannafanlaw.com](mailto:bth@hannafanlaw.com)  
*Attorneys for Defendant Tone Grant*

*Helen Kim (by BHB)*  
Helen B. Kim  
KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-3012  
Telephone: (310) 788-4400  
Fax: (310) 788-4471  
[helen.kim@kattenlaw.com](mailto:helen.kim@kattenlaw.com)  
*Attorneys for Defendant Dennis Klejna*

---

Jeffrey T. Golenbock  
Adam C. Silverstein  
GOLENBOCK EISEMAN ASSOR  
BELL & PESKOE LLP  
437 Madison Avenue, 35<sup>th</sup> Floor  
New York, NY 10022-7302  
Telephone: (212) 907-7300  
Fax: (212) 754-0330  
[jgolenbock@golenbock.com](mailto:jgolenbock@golenbock.com)  
[asilverstein@golenbock.com](mailto:asilverstein@golenbock.com)  
*Attorneys for Defendants Philip R. Bennett,  
Refco Group Holdings Inc., and Philip R.  
Bennett Three Year Annuity Trust*

---

Richard E. Nathan  
NATHAN LAW OFFICE  
123 South June Street  
Los Angeles, CA 90004  
Telephone: (323) 931-8080  
Fax: (323) 931-8008  
[renathan@art.net](mailto:renathan@art.net)  
*Attorneys for Defendant Dennis Klejna*

---

Michael T. Hannafan (*pro hac vice*)  
Blake T. Hannafan (*pro hac vice*)  
HANNAFAN & HANNAFAN, LTD.  
One East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Telephone: (312) 527-0055  
Fax: (312) 527-0220  
[mth@hannafanlaw.com](mailto:mth@hannafanlaw.com)  
[bth@hannafanlaw.com](mailto:bth@hannafanlaw.com)  
*Attorneys for Defendant Tone Grant.*


---

Helen B. Kim  
KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-3012  
Telephone: (310) 788-4400  
Fax: (310) 788-4471  
[helen.kim@kattenlaw.com](mailto:helen.kim@kattenlaw.com)  
*Attorneys for Defendant Dennis Klejna*

---

Jeffrey T. Golenbock  
Adam C. Silverstein  
GOLENBOCK EISEMAN ASSOR  
BELL & PESKOE LLP  
437 Madison Avenue, 35<sup>th</sup> Floor  
New York, NY 10022-7302  
Telephone: (212) 907-7300  
Fax: (212) 754-0330  
[jgolenbock@golenbock.com](mailto:jgolenbock@golenbock.com)  
[asilverstein@golenbock.com](mailto:asilverstein@golenbock.com)  
*Attorneys for Defendants Philip R. Bennett,  
Refco Group Holdings Inc., and Philip R.  
Bennett Three Year Annuity Trust*

---

  
Richard E. Nathan  
NATHAN LAW OFFICE  
123 South June Street  
Los Angeles, CA 90004  
Telephone: (323) 931-8080  
Fax: (323) 931-8008  
[renathan@att.net](mailto:renathan@att.net)  
*Attorneys for Defendant Dennis Klejna*



Scott E. Hershman  
Stephen R. Blacklocks  
Richard Soto  
HUNTON & WILLIAMS LLP  
200 Park Avenue  
New York, New York 10166-0091  
Telephone: (212) 309-1000  
Fax: (212) 309-1100  
[shershman@hunton.com](mailto:shershman@hunton.com)  
[sblacklocks@hunton.com](mailto:sblacklocks@hunton.com)  
[rsoto@hunton.com](mailto:rsoto@hunton.com)  
*Attorneys for Defendant Santo C. Maggio*

Christopher R. Harris  
Miles Ruthberg  
Kevin Metz  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022  
Telephone: (212) 906-1200  
Fax: (212) 751-4864  
[christopher.harris@lw.com](mailto:christopher.harris@lw.com)  
[miles.ruthberg@lw.com](mailto:miles.ruthberg@lw.com)  
[kevin.metz@lw.com](mailto:kevin.metz@lw.com)  
*Attorneys for Defendant Ernst & Young LLP*

Aaron E. Albert  
Alan C. Thomas  
FISCHER PORTER THOMAS &  
REINFELD, P.C.  
440 Sylvan Avenue, Suite 130  
Englewood Cliffs, NJ 07632-2700  
Telephone: (201) 569-5959  
Fax: (201) 871-4544  
[aalbert@fpmtlaw.com](mailto:aalbert@fpmtlaw.com)  
[athomas@fpmtlaw.com](mailto:athomas@fpmtlaw.com)  
*Attorneys for Defendants Beckenham  
Trading Company, Inc. and  
Andrew Krieger*

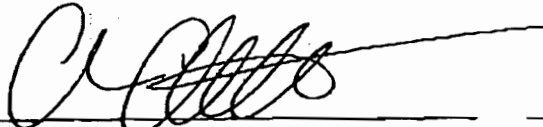
Charles E. Clayman  
Amy E. Millard  
CLAYMAN & ROSENBERG  
305 Madison Avenue  
Suite 1301  
New York, NY 10165  
Telephone: (212) 922-1080  
Fax: (212) 949-8255  
[clayman@clayro.com](mailto:clayman@clayro.com)  
[amillard@clayro.com](mailto:amillard@clayro.com)  
*Attorneys for Defendant Paul Koury*

---

Scott E. Hershman  
Stephen R. Blacklocks  
Richard Soto  
HUNTON & WILLIAMS LLP  
200 Park Avenue  
New York, New York 10166-0091  
Telephone: (212) 309-1000  
Fax: (212) 309-1100  
[shershman@hunton.com](mailto:shershman@hunton.com)  
[sblacklocks@hunton.com](mailto:sblacklocks@hunton.com)  
[rsoto@hunton.com](mailto:rsoto@hunton.com)  
*Attorneys for Defendant Santo C. Maggio*

---

Christopher R. Harris  
Miles Ruthberg  
Kevin Metz  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022  
Telephone: (212) 906-1200  
Fax: (212) 751-4864  
[christopher.harris@lw.com](mailto:christopher.harris@lw.com)  
[miles.ruthberg@lw.com](mailto:miles.ruthberg@lw.com)  
[kevin.metz@lw.com](mailto:kevin.metz@lw.com)  
*Attorneys for Defendant Ernst & Young LLP*



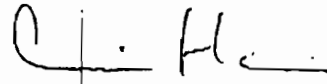
---

Aaron E. Albert  
Alan C. Thomas  
FISCHER PORTER THOMAS &  
REINFELD, P.C.  
180 Sylvan Avenue, 2nd Floor  
Englewood Cliffs, NJ 07632  
Telephone: (201) 569-5959  
Fax: (201) 871-4544  
[aalbert@fpmtlaw.com](mailto:aalbert@fpmtlaw.com)  
[athomas@fpmtlaw.com](mailto:athomas@fpmtlaw.com)  
*Attorneys for Defendants Beckenham  
Trading Company, Inc. and  
Andrew Krieger*

---

Charles E. Clayman  
Amy B. Millard  
CLAYMAN & ROSENBERG  
305 Madison Avenue  
Suite 1301  
New York, NY 10165  
Telephone: (212) 922-1080  
Fax: (212) 949-8255  
[clayman@clayro.com](mailto:clayman@clayro.com)  
[amillard@clayro.com](mailto:amillard@clayro.com)  
*Attorneys for Defendant Paul Koury*





---

Scott E. Hershman  
Stephen R. Blacklocks  
Richard Soto  
HUNTON & WILLIAMS LLP  
200 Park Avenue  
New York, New York 10166-0091  
Telephone: (212) 309-1000  
Fax: (212) 309-1100  
[shershman@hunton.com](mailto:shershman@hunton.com)  
[sblacklocks@hunton.com](mailto:sblacklocks@hunton.com)  
[rsoto@hunton.com](mailto:rsoto@hunton.com)  
*Attorneys for Defendant Santo C. Maggio*

---

Christopher R. Harris  
Miles Ruthberg  
Kevin Metz  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022  
Telephone: (212) 906-1200  
Fax: (212) 751-4864  
[christopher.harris@lw.com](mailto:christopher.harris@lw.com)  
[miles.ruthberg@lw.com](mailto:miles.ruthberg@lw.com)  
[kevin.metz@lw.com](mailto:kevin.metz@lw.com)  
*Attorneys for Defendant Ernst & Young LLP*

---

Aaron E. Albert  
Alan C. Thomas  
FISCHER PORTER THOMAS &  
REINFELD, P.C.  
440 Sylvan Avenue, Suite 130  
Englewood Cliffs, NJ 07632-2700  
Telephone: (201) 569-5959  
Fax: (201) 871-4544  
[aalbert@fpmtlaw.com](mailto:aalbert@fpmtlaw.com)  
[athomas@fpmtlaw.com](mailto:athomas@fpmtlaw.com)  
*Attorneys for Defendants Beckenham  
Trading Company, Inc. and  
Andrew Krieger*

---

Charles E. Clayman  
Amy E. Millard  
CLAYMAN & ROSENBERG  
305 Madison Avenue  
Suite 1301  
New York, NY 10165  
Telephone: (212) 922-1080  
Fax: (212) 949-8255  
[clayman@clayro.com](mailto:clayman@clayro.com)  
[amillard@clayro.com](mailto:amillard@clayro.com)  
*Attorneys for Defendant Paul Koury*

---

Scott E. Hershman  
Stephen R. Blacklocks  
Richard Soto  
HUNTON & WILLIAMS LLP  
200 Park Avenue  
New York, New York 10166-0091  
Telephone: (212) 309-1000  
Fax: (212) 309-1100  
[shershman@hunton.com](mailto:shershman@hunton.com)  
[sblacklocks@hunton.com](mailto:sblacklocks@hunton.com)  
[rsoto@hunton.com](mailto:rsoto@hunton.com)  
*Attorneys for Defendant Santo C. Maggio*


---

Christopher R. Harris  
Miles Ruthberg  
Kevin Metz  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022  
Telephone: (212) 906-1200  
Fax: (212) 751-4864  
[christopher.harris@lw.com](mailto:christopher.harris@lw.com)  
[miles.ruthberg@lw.com](mailto:miles.ruthberg@lw.com)  
[kevin.metz@lw.com](mailto:kevin.metz@lw.com)  
*Attorneys for Defendant Ernst & Young LLP*

---

Aaron E. Albert  
Alan C. Thomas  
FISCHER PORTER THOMAS &  
REINFELD, P.C.  
440 Sylvan Avenue, Suite 130  
Englewood Cliffs, NJ 07632-2700  
Telephone: (201) 569-5959  
Fax: (201) 871-4544  
[aalbert@fpmilaw.com](mailto:aalbert@fpmilaw.com)  
[athomas@fpmilaw.com](mailto:athomas@fpmilaw.com)  
*Attorneys for Defendants Beckenham  
Trading Company, Inc. and  
Andrew Krieger*

---

  
Charles E. Clayman  
Amy E. Millard  
CLAYMAN & ROSENBERG  
305 Madison Avenue  
Suite 1301  
New York, NY 10165  
Telephone: (212) 922-1080  
Fax: (212) 949-8255  
[clayman@clayro.com](mailto:clayman@clayro.com)  
[amillard@clayro.com](mailto:amillard@clayro.com)  
*Attorneys for Defendant Paul Koury*



Scott A. Edelman  
Sander Bak  
MILBANK, TWEED, HADLEY  
& McCLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000  
Fax: (212) 530-5219  
[SEdelman@Milbank.com](mailto:SEdelman@Milbank.com)  
[SBak@Milbank.com](mailto:SBak@Milbank.com)  
*Attorneys for Marc Kirschner as Trustee  
of the Refco Litigation Trust and  
Refco Private Actions Trust, for Capital  
Management and VR Plaintiffs, and  
Co-Lead Counsel for Lead Plaintiffs and the  
Putative Class in In re Refco Capital  
Markets, Ltd. Brokerage Customer  
Securities Lit.*

John K. Villa (*pro hac vice*)  
Michael S. Sundermeyer (*pro hac vice*)  
Craig D. Singer (*pro hac vice*)  
Thomas G. Ward  
William T. Burke (*pro hac vice*)  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 434-5000  
Fax: (202) 434-5029  
[jvilla@wc.com](mailto:jvilla@wc.com)  
[msundermeyer@wc.com](mailto:msundermeyer@wc.com)  
[csinger@wc.com](mailto:csinger@wc.com)  
[tward@wc.com](mailto:tward@wc.com)  
[wburke@wc.com](mailto:wburke@wc.com)  
*Attorneys for Defendant Mayer Brown LLP*

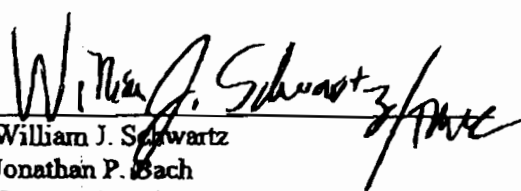
William J. Schwartz  
Jonathan P. Bach  
Timothy M. Kerr  
Daniel M. Hibshoosh  
COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Telephone: (212) 479-6000  
Fax: (212) 479-6275  
[wschwartz@cooley.com](mailto:wschwartz@cooley.com)  
[jbach@cooley.com](mailto:jbach@cooley.com)  
[tkerr@cooley.com](mailto:tkerr@cooley.com)  
[dhibshoosh@cooley.com](mailto:dhibshoosh@cooley.com)  
*Attorneys for Defendant Joseph P. Collins*

Robert P. Wise, Jr.  
Paul Spagnoletti  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Fax: (212) 450-3512  
[robert.wise@dpw.com](mailto:robert.wise@dpw.com)  
[paul.spagnoletti@dpw.com](mailto:paul.spagnoletti@dpw.com)  
*Attorneys for Defendants Ingram  
Micro, Inc. and CIM Ventures, Inc.*

13196532.2.LITIGATION

Scott A. Edelman  
Sander Bak  
MILBANK, TWEED, HADLEY  
& McCLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000  
Fax: (212) 530-5219  
[SEdelman@Milbank.com](mailto:SEdelman@Milbank.com)  
[SBak@Milbank.com](mailto:SBak@Milbank.com)  
*Attorneys for Marc Kirschner as Trustee  
of the Refco Litigation Trust and  
Refco Private Actions Trust, for Capital  
Management and VR Plaintiffs, and  
Co-Lead Counsel for Lead Plaintiffs and the  
Putative Class in In re Refco Capital  
Markets, Ltd. Brokerage Customer  
Securities Lit.*

John K. Villa (*pro hac vice*)  
Michael S. Sundermeyer (*pro hac vice*)  
Craig D. Singer (*pro hac vice*)  
Thomas G. Ward  
William T. Burke (*pro hac vice*)  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 434-5000  
Fax: (202) 434-5029  
[jvilla@wc.com](mailto:jvilla@wc.com)  
[msundermeyer@wc.com](mailto:msundermeyer@wc.com)  
[csinger@wc.com](mailto:csinger@wc.com)  
[tward@wc.com](mailto:tward@wc.com)  
[wburke@wc.com](mailto:wburke@wc.com)  
*Attorneys for Defendant Mayer Brown LLP*

  
William J. Schwartz  
Jonathan P. Bach  
Timothy M. Kerr  
Daniel M. Hibshoosh  
COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Telephone: (212) 479-6000  
Fax: (212) 479-6275  
[wswartz@cooley.com](mailto:wswartz@cooley.com)  
[jbach@cooley.com](mailto:jbach@cooley.com)  
[tkerr@cooley.com](mailto:tkerr@cooley.com)  
[dhbshoosh@cooley.com](mailto:dhbshoosh@cooley.com)  
*Attorneys for Defendant Joseph P. Collins*

Robert F. Wise, Jr.  
Paul Spagnoletti  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Fax: (212) 450-3512  
[robert.wise@dpw.com](mailto:robert.wise@dpw.com)  
[paul.spagnoletti@dpw.com](mailto:paul.spagnoletti@dpw.com)  
*Attorneys for Defendants Ingram  
Micro, Inc. and CIM Ventures, Inc.*

13196532.2 LITIGATION



---

Scott A. Edelman  
Sander Bak  
MILBANK, TWEED, HADLEY  
& McCLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000  
Fax: (212) 530-5219  
[SEdelman@Milbank.com](mailto:SEdelman@Milbank.com)  
[SBak@Milbank.com](mailto:SBak@Milbank.com)  
*Attorneys for Marc Kirschner as Trustee  
of the Refco Litigation Trust and  
Refco Private Actions Trust, for Capital  
Management and VR Plaintiffs, and  
Co-Lead Counsel for Lead Plaintiffs and the  
Putative Class in In re Refco Capital  
Markets, Ltd. Brokerage Customer  
Securities Lit.*

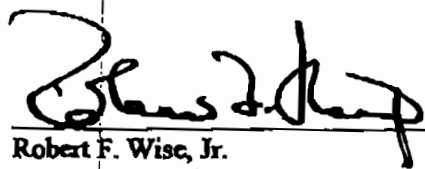
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John K. Villa (*pro hac vice*)  
Michael S. Sundermeyer (*pro hac vice*)  
Craig D. Singer (*pro hac vice*)  
Thomas G. Ward  
William T. Burke (*pro hac vice*)  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 434-5000  
Fax: (202) 434-5029  
[jvilla@wc.com](mailto:jvilla@wc.com)  
[msundermeyer@wc.com](mailto:msundermeyer@wc.com)  
[csinger@wc.com](mailto:csinger@wc.com)  
[tward@wc.com](mailto:tward@wc.com)  
[wburke@wc.com](mailto:wburke@wc.com)  
*Attorneys for Defendant Mayer Brown LLP*

---

William J. Schwartz  
Jonathan P. Bach  
Timothy M. Kerr  
Daniel M. Hibshoosh  
COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Telephone: (212) 479-6000  
Fax: (212) 479-6275  
[wschwartz@cooley.com](mailto:wschwartz@cooley.com)  
[jbach@cooley.com](mailto:jbach@cooley.com)  
[tkerr@cooley.com](mailto:tkerr@cooley.com)  
[dhibshoosh@cooley.com](mailto:dhibshoosh@cooley.com)  
*Attorneys for Defendant Joseph P. Collins*

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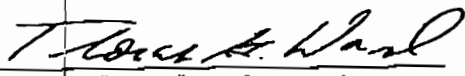
  
Robert F. Wise, Jr.  
Paul Spagnoletti  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Fax: (212) 450-3512  
[robert.wise@dpw.com](mailto:robert.wise@dpw.com)  
[paul.spagnoletti@dpw.com](mailto:paul.spagnoletti@dpw.com)  
*Attorneys for Defendants Ingram  
Micro, Inc. and CIM Ventures, Inc.*

131965322 LITIGATION

Dated: Washington, D.C.  
June 10, 2008

WILLIAMS & CONNOLLY LLP

By:

  
John K. Villa (admitted pro hac vice)  
Michael S. Sundermeyer (admitted pro hac vice)  
Craig D. Singer (admitted pro hac vice)  
Thomas G. Ward (TW 6255)  
William T. Burke (admitted pro hac vice)  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 434-5000  
Fax: (202) 434-5029

Attorneys for Defendants Mayer Brown LLP and  
Edward S. Best

As BAWAG has shown good cause for entry of this order, and has obtained consent of all but one relevant party, and as the objecting party has not proffered a substantive relevant objection to the order, but has simply withheld consent in retaliation for BAWAG's refusal to consent to ~~an~~ unrelated relief sought by the objecting party, the instant stipulation and order is approved.

SO ORDERED

  
GERARD E. LYNCH, U.S.D.J.

6/25/08